

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JAMES H. STERN

PLAINTIFF

VERSUS

**CIVIL ACTION NO. 2:08cv33 KS-M
APPEAL NO. 10-6662**

CHRISTOPHER EPPS, ET AL

DEFENDANTS

**ORDER GRANTING *IN FORMA PAUPERIS* STATUS ON APPEAL
AND SETTING A PAYMENT SCHEDULE UNDER THE PLRA**

There came on for consideration of the court in the captioned cause the plaintiff's application to proceed in forma pauperis [283] and Motion for Transcript of Jury Trial [285] in his appeal to the United States Court of Appeals for the Fifth Circuit of this civil action which was dismissed on April 13, 2010 following a jury verdict in favor of the defendant.

Having carefully reviewed this matter, the court finds that plaintiff's application includes statements of his assets, of his inability to prepay fees, of the nature of the action, and of his belief that he is entitled to redress. Pursuant to 28 U.S.C. § 1915, as amended, and notwithstanding plaintiff's lack of assets, it is

ORDERED that plaintiff's application to proceed in forma pauperis is granted, except to the extent that plaintiff is required to make payments set forth below. If judgment is rendered against the plaintiff, and the judgment includes the payments of costs under Section 1915, plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed in forma pauperis has been granted.

IT IS FURTHER ORDERED that plaintiff shall pay the full filing fee of \$455.00 by payments made to the Clerk of Court from the plaintiff's prison account. **Said payments will be**

forwarded to Clerk of Court, P.O. Box 23552, Jackson, Mississippi 39225-3552, with the plaintiff's name, civil action number 2:08cv33, and appeal number written on the payment.

IT IS FURTHER ORDERED that the court hereby assesses an initial partial appeal filing fee of 20 percent of the average monthly balance or the average monthly deposit, whichever is greater, in plaintiff's prison account for the six month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(b)(1). The **Mississippi State Penitentiary at Parchman** or other prison at which plaintiff may be incarcerated is required by law, when plaintiff's prison account has sufficient funds, to collect the initial partial filing fee and **forward it to the Clerk of Court, P.O. Box 23552, Jackson, Mississippi 39225-3552, with the plaintiff's name, civil action number 2:08cv33, and appeal number written on the payment.**

IT IS FURTHER ORDERED that after payment of the initial partial appeal filing fee, plaintiff is required to make monthly payments of 20 percent of the preceding month's income¹ credited to his prison account, until the total appeal filing fee of \$455.00 is paid. The Mississippi State Penitentiary at Parchman or other prison at which plaintiff may be incarcerated is required by law, when plaintiff's prison account exceeds the sum of \$10.00, to **forward monthly payments with the plaintiff's name, civil action number 2:08cv33, and appeal number written on the payment, to the Clerk of Court, P.O. Box 23552, Jackson, Mississippi 39225-3552, with each payment being a sum which equals 20 percent of the preceding month's income credited to plaintiff's prison account.**

The plaintiff's request for a copy of the trial transcript [285] is moot. He will be allowed

¹Income shall mean "whatever sums enter a prison trust account, disregarding the source." Lucien v. DeTella, 141 F.3d 773, 776 (7th Cir. 1998).

to check out a copy of the record once it is prepared and filed.

The Clerk is directed to mail copies of this Order to the **plaintiff** and to the **Inmate Accounts Officer**, MDOC Inmate Banking, P. O. Box 544, Jackson, MS 39205.

THIS the 30th day of September, 2010.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE